

E-FILED - 7/14/09

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

GREGORY WELKER,

No. C 08-04551 RMW (PR)

Petitioner,

ORDER DENYING PETITIONER'S
MOTION TO APPOINT COUNSEL AND
ORDER GRANTING PETITIONER'S
MOTION FOR ENLARGEMENT OF
TIME TO FILE TRAVERSE

v.

JAMES HARTLEY,

Respondent.

/ (Docket Nos. 8, 9)

Petitioner, a California state prisoner, filed a pro se petition for a writ of habeas corpus. Before the court is petitioner's motion for appointment of counsel. He has also filed a motion for extension of time to file his traverse. On November 12, 2008, the court issued an order to show cause to respondent as to why the petition should not be granted. For the reasons set forth below, the court DENIES petitioner's motion to appoint counsel (docket no. 8) without prejudice.

DISCUSSION

Petitioner requests appointment of counsel because he is a layperson and unschooled in law. However, the Sixth Amendment's right to counsel does not apply in habeas corpus actions. Knaubert v. Goldsmith, 791 F.2d 722, 728 (9th Cir. 1986). While 18 U.S. C. § 3006A(a)(2)(B) authorizes a district court to appoint counsel to represent a habeas

petitioner if “the court determines that the interests of justice so require,” the courts have made appointment of counsel the exception rather than the rule. Appointment is mandatory only when the circumstances of a particular case indicate that appointed counsel is necessary to prevent due process violations. See Chaney v. Lewis, 801 F.2d 1191, 1196 (9th Cir. 1986).

Petitioner has thus far been able to adequately present his claims for relief. Respondent has been ordered to produce the state record, which may include petitioner’s state appellate briefs prepared by counsel. No evidentiary hearing appears necessary in this case, nor are any other extraordinary circumstances apparent. Accordingly, the court concludes that appointment of counsel is not necessary at this time. Petitioner’s motion for appointment of counsel (docket no. 8) is DENIED without prejudice.

Good cause appearing, petitioner’s application for enlargement of time in which to file a traverse (docket no. 9) is GRANTED. Petitioner shall file a traverse **on or before October 2, 2009**.

This order terminates docket nos. 8, 9.

IT IS SO ORDERED.

DATED: 7/14/09



RONALD M. WHYTE
United States District Judge